

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION  
STAFF REPORT**

March 21, 2013 Meeting  
Agenda Item 2

**SUBJECT:** Breakers Drive Lot Line Adjustment/Variance (PA2012-173)  
3124/3126 and 3130/3140 Breakers Drive

- Lot Line Adjustment No. LA2012-007
- Variance Permit No. VA2012-007

**APPLICANT:** James C. Person, Jr.

**PLANNER:** Benjamin M. Zdeba, Assistant Planner  
(949) 644-3253, [bzdeba@newportbeachca.gov](mailto:bzdeba@newportbeachca.gov)

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**PROJECT SUMMARY**

The project consists of a lot line adjustment to an interior lot line between two lots and subsequent variance for reduced side setbacks on both properties. The condominium development at 3124 and 3126 Breakers Drive was constructed in the wrong location due to an errant survey used to site the building in 2004. The adjustment of the interior lot line (between 3124/3126 and 3130/3140 Breakers Drive) would result in side setbacks less than the required four (4) feet, but greater than three (3) feet. The applicant is requesting approval of this project to comply with the applicable Building and Zoning Code regulations and to prevent substantial alterations to the existing structure. No construction is proposed at this time and the physical placement of the structures on both lots would not change.

**RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Lot Line Adjustment No. LA2012-007 and Variance Permit No. VA2012-007 (Attachment No. PC 1).

### VICINITY MAP



### GENERAL PLAN



### ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Two-unit dwellings
NORTH	R-1 (Single-Unit Residential)	RS-D (Single-Unit Residential Detached)	Single-unit dwellings
SOUTH	PR (Parks and Recreation)	PR (Parks and Recreation)	Corona del Mar State Beach
EAST	R-1 (Single-Unit Residential)	RS-D (Single-Unit Residential Detached)	Single-unit dwellings
WEST	RT (Two-Unit Residential)	R-2 (Two-Unit Residential)	Two-unit dwellings

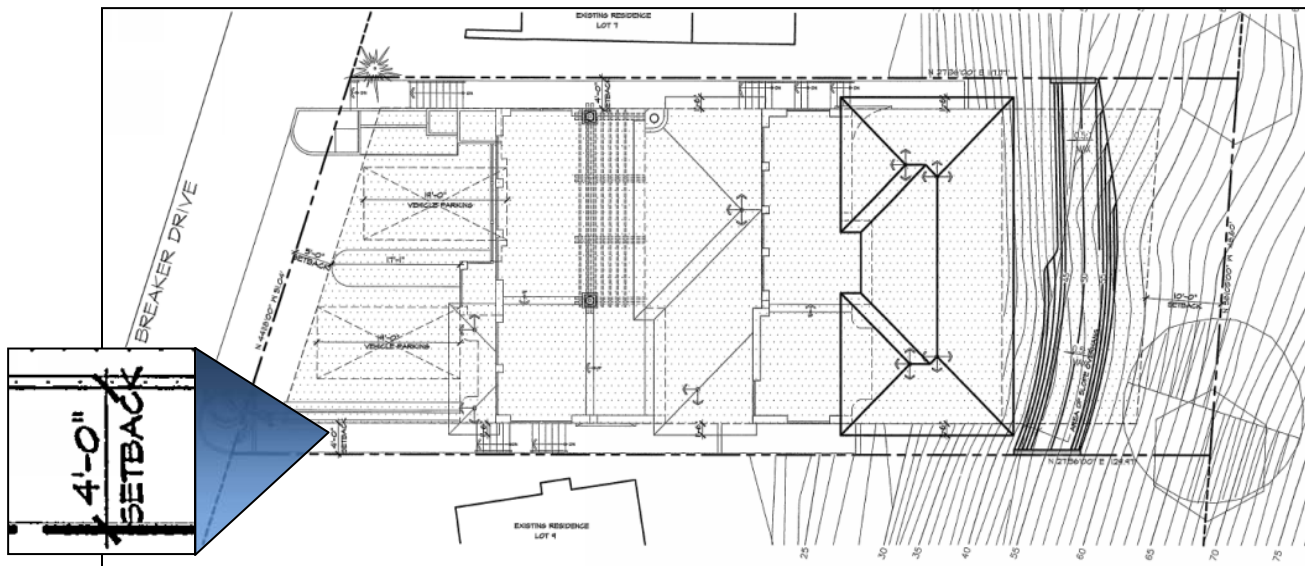
## **INTRODUCTION**

### **Project Setting and Background**

The properties are located north of Corona del Mar State Beach between Breakers Drive and Ocean Boulevard in Corona del Mar.

The property located 3124/3126 Breakers Drive is a skewed lot with a northerly width of 48.52 feet, a southerly width of 51.08 feet, a westerly depth of 117.62 feet, and an easterly depth of 130.01 feet. The approximate lot area is 5,986 square feet. Currently, the property is developed with a 6,574-square-foot two-unit-condominium structure that was constructed in 2004. City-approved plans depicted a building structure that complied with all required setbacks (see *Figure 1* below).

The property located at 3130/3140 Breakers Drive is also a skewed lot with a northerly width of 50.84 feet, a southerly curved width of approximately 59 feet, a westerly depth of 130.01 feet, and an easterly depth of 140.41 feet. The approximate lot area is 6,902 square feet. This property is developed with a 6,397-square-foot duplex that was constructed in 2011. City-approved plans show compliance with all applicable Zoning and Building Code regulations and the existing structure was built according to the approved plans.



**Figure 1**, Site plan from the construction documents for 3124/3126 Breakers Drive.

At the time 3130/3140 Breakers Drive was redeveloped, the project surveyor determined the condominiums on the abutting property at 3124/3126 Breakers Drive were incorrectly sited due to an erroneous survey (PC 2 Applicant's Project Description and Justification). Therefore, the as-built setbacks for the buildings at 3124/3126 Breakers Drive range from a minimum of 2.50 feet to a maximum distance of 3.56 feet (neither of which comply with the Zoning Code-required 4-foot minimum, see *Figure 2*



below). Furthermore, the California Building Code requires a minimum distance of three (3) feet from a property line to any opening (e.g., windows and doors) on a residential structure. The neighboring property owners have reached an agreement to pursue a lot line adjustment to relocate the interior lot line. The relocation of the interior lot line will create setbacks for both properties that do not comply with the Zoning Code-required four (4) feet; however, both structures will maintain a minimum setback of three (3) feet to satisfy the California Building Code issue. No construction or change in building location is proposed. If the project is denied, the existing structure will not comply with the Building and Zoning Code regulations for separation and setbacks. The property owner would then either maintain the illegal nonconforming structure or reconstruct the affected area.

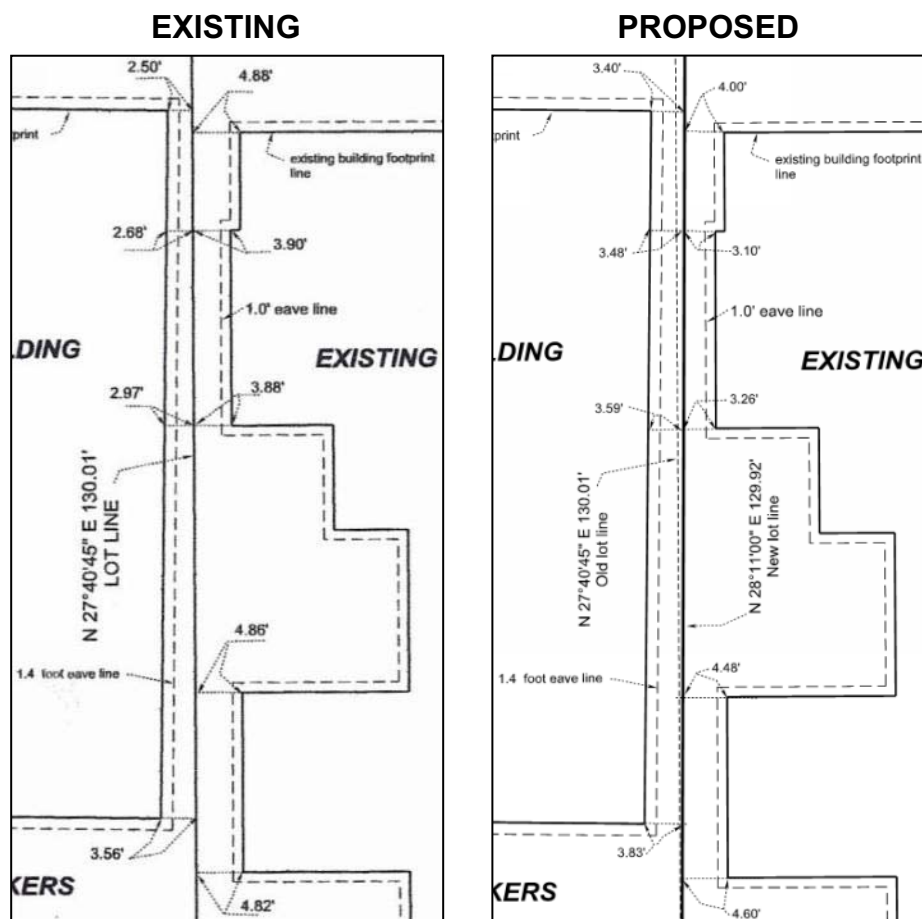


Figure 2, Existing interior lot line (left) and proposed interior lot line (right).

## DISCUSSION

### General Plan and Local Coastal Plan

The properties are designated Two-Unit Residential (RT) and (RT-C) by the Land Use Element of the City's General Plan and Coastal Land Use Plan, which are intended to

provide for a range of two-unit dwellings such as duplexes and townhomes. The existing development on both properties is consistent with these designations.

### Zoning Code

The properties are zoned Two-Unit Residential (R-2) by the Zoning Code, which allows one or two residential dwelling units located on a single legal lot. The existing development on both properties is consistent with this zoning designation. If the lot line adjustment request is approved, the structures will conform to all applicable development standards of the R-2 Zoning District, with the exception of the requested encroachments into the required 4-foot side setbacks. These requests are discussed in more detail below.

### Lot Line Adjustment Request

#### *Analysis*

To determine if the requested lot line adjustment is appropriate, staff first analyzed the proposed lot dimensions and lot areas for compliance with the Zoning Code. Staff then analyzed the proposal for consistency with the purpose and intent of the Subdivision Code. This analysis is provided below.

#### *Lot Line Adjustment Findings and Summary*

Pursuant to Section 19.76.020 of the Subdivision Code, the reviewing authority must make the following findings in order to approve a lot line adjustment:

1. *Approval of the lot line adjustment will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of this title.*
2. *The number of parcels resulting from the lot line adjustment remains the same as before the lot line adjustment.*
3. *The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*
4. *Neither the lots as adjusted nor adjoining parcels will be deprived of legal access as a result of the lot line adjustment.*

5. *That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*
6. *That the final configuration of a reoriented lot does not result in any reduction of the street side setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street side setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street side setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Staff believes sufficient facts exist to support the lot line adjustment request.

The two properties were originally created in 1938 as part of the Tract No. 1026 subdivision and the dimensions have remained unchanged. Records indicate that each property has been residentially developed since at least the late 1950s and early 1960s.

The proposed lot line adjustment is a slight shift of the interior lot line eastward towards 3130/3140 Breakers Drive by 1.15 feet at the northerly width tapering down to a 0-foot shift at the southerly width. The number of lots will remain unchanged and the properties are not being reoriented or altered such that access is compromised.

Zoning Code Section 20.18.030 (Residential Zoning Districts General Development Standards) requires a lot width<sup>1</sup> of 50 feet and minimum site area of 5,000 square feet for *newly created lots*. Given the skewed configuration of these properties, both will maintain a minimum lot width of 50 feet with the proposed change. Furthermore, both properties will maintain a site area greater than the required 5,000 square feet (approximately 6,055 square feet and 6,839 square feet, respectively). Both lots currently have legal access from Breakers Drive which will not be affected by the lot line adjustment.

### Variance Request

#### *Analysis*

To determine if the requested variance is appropriate, staff first analyzed the proposed setbacks for compatibility with the surrounding development. The summary below provides analysis related to the purpose and intent of the Variance pursuant to the provisions of the Zoning Code.

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<sup>1</sup> "Lot width" means the horizontal distance between the side lot lines, measured at right angles to the line that defines the lot depth at a point midway between the front and rear lot lines.

### *Variance Findings and Summary*

Pursuant to Section 20.52.090 of the Zoning Code, the Planning Commission must make the following findings in order to approve a variance:

1. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*
2. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*
3. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*
4. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*
5. *Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and*
6. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Staff believes sufficient facts exist to support the variance request for the side setback encroachments for the existing structures.

As previously discussed, the subject properties are each developed with two-unit dwellings and no construction or alterations are proposed. The goal of the application is to achieve both Zoning and Building Code compliance for 3124/3126 Breakers Drive and to maintain Zoning Code compliance for 3130/3140 Breakers Drive. If approved, the lot line adjustment and variance would achieve this goal. The need for a variance results from the proposed lot line adjustment to rectify a significant California Building Code issue. Typically, such an issue would require corrective actions, but in this case the modifications necessary to comply with the California Building Code and Zoning Code would have significant architectural and structural implications.

The errant survey and related staking on 3124/3126 Breakers Drive resulted in the construction of a 6,574-square-foot two-unit-condominium encroaching into the required setback. Strict application of the Zoning Code requirements in this case would require demolition and substantial alteration (walls, foundation, roof, utilities, etc.) to occur on the 3124/3126 Breakers Drive property.

Although each property along Breakers Drive is subject to a 4-foot setback, development is minimally visible from Ocean Boulevard. The proposed maximum encroachment of 0.60 feet into the required 4-foot setback on 3124/3126 Breakers Drive and the proposed maximum encroachment of 0.90 feet into the required 4-foot setback on 3130/3140 Breakers Drive is not anticipated to be out of character since the buildings are existing and appear compatible with the surrounding neighborhood. It should also be noted that most lots within Corona del Mar are subject to a minimum 3-foot side setback<sup>2</sup>. The proposed lot line adjustment, although resulting in less than the Zoning Code-required four (4) feet, will maintain at least a 3.10-foot setback which is comparable to allowed setbacks in the City and will provide adequate light and air. If approved as conditioned, the resolution would maintain that the buildable area is determined using a 4-foot side setback; therefore, the property owners are not gaining an added benefit of additional floor area with the allowed encroachments.

### Alternatives

The Commission has the option to deny the request if it is found that the applications are inconsistent with the purpose and intent of the Zoning and Subdivision Codes or that the project might prove detrimental to the area (PC 7 Draft Resolution for Denial). Denial would require the property owner at 3124/3126 Breakers Drive to substantially alter the existing building such that it complies with the California Building Code and Zoning Code.

### Environmental Review

The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations), which allows for minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel. In this case, the project involves a lot line adjustment between two (2) interior properties and a resulting variance for a reduction in side setbacks.

### Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

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<sup>2</sup> Side setbacks are determined by the width of the lot in the R-1 and R-2 Zoning Districts. If a lot is 40 feet wide or less, 3-foot side setbacks are required. A lot width over 40 feet requires a minimum side setback of four (4) feet.



Prepared by:

  
Benjamin M. Zdeba  
Assistant Planner

Submitted by:

  
Brenda Wisneski, AICP, Deputy Director

### **ATTACHMENTS**

- PC 1 Draft Resolution for Approval with Findings and Conditions
- PC 2 Applicant's Project Description and Justification
- PC 3 3124/3126 Site Plan
- PC 4 3130/3140 Site Plan
- PC 5 Existing Lot Lines
- PC 6 Proposed Lot Lines
- PC 7 Draft Resolution for Denial

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# **Attachment No. PC 1**

Draft Resolution for Approval with  
Findings and Conditions

## **RESOLUTION NO. #####**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2012-007 AND VARIANCE NO. VA2012-007 FOR AN INTERIOR LOT LINE ADJUSTMENT AND SUBSEQUENT VARIANCE FOR RESULTING SETBACK ENCROACHMENTS LOCATED AT 3124/3126 AND 3130/3140 BREAKERS DRIVE (PA2012-173)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by James C. Person, Jr. on behalf of the property owners Daniel and Bonnie Leonard and Margaret J.F. Parrott, with respect to properties located at 3124/3126 Breakers Drive and 3130/3140, and legally described as a Lot 8 of Tract No. 1026 and Parcel 1 of Parcel Map No. 2004-131, respectively, requesting approval of a lot line adjustment and variance.
2. The applicant is proposing a lot line adjustment and subsequent variance for setbacks on both properties. The condominium development at 3124 and 3126 Breakers Drive was constructed in the wrong location due to an errant survey used to site the building in 2004. The adjustment of the interior lot line (between 3124/3126 and 3130/3140 Breakers Drive) would result in side setbacks less than the required four (4) feet, but greater than three (3) feet.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential (RT-C).
5. A public hearing was held on March 21, 2013, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

1. The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations), which allows for minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcel.

2. The project involves a lot line adjustment between two interior properties and a resulting variance for a reduction in side setbacks.

### SECTION 3. REQUIRED FINDINGS.

#### **Lot Line Adjustment**

In accordance with Section 19.76.020 of the Newport Beach Municipal Code, the following findings for approval of a lot line adjustment and facts in support of such findings are set forth:

#### **Finding:**

- A. *Approval of the lot line adjustment will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of this title.*

#### **Facts in Support of Finding:**

1. There is no change to the existing structures located on the parcels; therefore, the use will remain consistent with the General Plan Land Use designation of Two-Unit Residential (RT).
2. The relocation of the interior lot line between the subject parcels will not result in a development pattern which is inconsistent with the surrounding neighborhood.
3. Public improvements and infrastructure currently exist within the neighborhood; and the lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.
4. The proposed lot line adjustment is consistent with the purpose identified by Title 19. The subdivision is consistent with the General Plan, does not affect open space areas in the City, does not negatively impact surrounding land owners, lot purchasers, or residents, provides for orderly controlled growth within the City, provides adequate traffic circulation and utilities, will not negatively affect property values.

#### **Finding:**

- B. *The number of parcels resulting from the lot line adjustment remains the same as before the lot line adjustment.*

Facts in Support of Finding:

1. The interior lot line between two (2) existing parcels is being realigned; therefore, no additional parcels are being created and no parcels are being eliminated.

Finding:

*C. The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*

Facts in Support of Finding:

1. The proposed lot widths and lot sizes are consistent with the zoning requirements of Title 20 of the Newport Beach Municipal Code.
2. The parcels proposed to be created by the lot line adjustment comply with all applicable zoning regulations with exception of side setbacks between the two (2) properties for which a variance request is submitted.
3. There will be no change in allowed land uses, density, or intensity on the properties.
4. The future development on the parcels will comply with the Zoning Code development standards.

Finding:

*D. Neither the lots as adjusted nor adjoining parcels will be deprived of legal access as a result of the lot line adjustment.*

Facts in Support of Finding:

1. Legal access to the adjusted and adjoining parcels is provided via Breakers Drive and Ocean Boulevard.

Finding:

*E. That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*



Facts in Support of Finding:

1. The existing parcels do not take access from an alley. Vehicle access is provided by way of Breakers Drive which is not being affected by this lot line adjustment.

Finding:

*F. That the final configuration of a reoriented lot does not result in any reduction of the street side setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street side setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street side setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Facts in Support of Finding:

1. The lot is not being reoriented and the final configuration of the parcels does not result in a requirement for revised setbacks.

**Variance**

In accordance with Section 20.52.090 of the Newport Beach Municipal Code, the following findings for approval of a variance and facts in support of such findings are set forth:

Finding:

*A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

1. The errant survey and related staking on 3124/3126 Breakers Drive resulted in a structure that, although constructed in accordance with the approved plans, was improperly sited and does not comply with the 4-foot side setback requirement. The structure complies with all other zoning regulations.
2. Although the setbacks on 3130/3140 Breakers Drive resulting from the lot line adjustment will not comply with the Zoning Code-required four (4) feet, a minimum setback of 3.28 feet will be maintained which is consistent with many residential lots in Corona del Mar.
3. The existing setbacks on 3124/3126 Breakers Drive are less compliant than those resulting from the proposed lot line adjustment (2.50 feet prior to 3.20 feet

after). The resulting variance will increase the side setback to a distance that satisfies the California Building Code and is more compliant with the 4-foot required side setback.

Finding:

*B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

1. The existing distances between the neighboring dwelling units, between 7.38 feet and 8.38 feet, will remain unchanged and are comparable to properties in the immediate vicinity as well as other areas of the City.
2. The errant survey and subsequent construction have resulted in a two-unit structure that does not comply with the California Building Code even though it was built in accordance with the approved plans. Rejection of the variance request would result in a two-unit structure that is neither conforming nor legal nonconforming by definition. Without unforeseen costly repairs, the two-unit structure would not be provided the standard Zoning Code relief regulations offered to nonconforming structures and would possibly be unsellable. There are very few instances in the City where this same scenario occurs, especially with structures less than 10 years old.
3. Strict compliance with the Zoning Code would preclude the property owners from pursuing a lot line adjustment, a privilege that may be enjoyed by others in the vicinity. Subsequently the building located on 3124/3126 Breakers Drive would need to be substantially altered.

Finding:

*C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

1. The lot line adjustment between the two (2) properties is necessary to remedy a California Building Code issue. If the resulting variance to encroach into the required side setbacks was not granted, the applicant will be required to demolish and substantially alter the majority of the easterly side of the building located on 3124/3126 Breakers Drive.
2. Allowing for the setback encroachments of the principal structures will assist in mitigating negative impacts and circumstances associated with the property affording a higher level of enjoyment and use of the property by the applicant or

future property owners, which is consistent with the intent of the Zoning Code to promote the orderly growth and development of the City, to promote and protect the public health, safety, peace, comfort and general welfare, to protect the character and social and economic vitality of all districts within the City, and to assure the orderly and beneficial development of such areas.

Finding:

*D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

1. Granting of the variance is a practical solution to address Building Code issues on a structure that, although built according to plan, does not comply with said code.
2. The variance will not change the prescribed setbacks for the lot rather it will allow an exception. As conditioned, the setback encroachments will become null and void upon redevelopment of either property.
3. Becoming Building Code-compliant will allow the owner to market and sell the property in the future consistent with other homes that were constructed according to Zoning Code-compliant plans.
4. All other zoning regulations (e.g., floor area limits) will be based on the code-required 4-foot side setback.

Finding:

*E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

1. There is no construction proposed as a result of the variance approval. The two (2) properties have been developed since the late 1950s and were subsequently redeveloped in the 2000s. The existing development, including the non-compliant setbacks, has not proven detrimental and granting of the requested variance will not present a foreseeable change.

Finding:

*F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

1. The granting of this variance will not conflict with the Land Use Element of the General Plan, which designates the site for Two-Unit Residential (RT) use, or the Zoning Code, which designates the site as Two-Unit Residential (R-2). These designations provide for the existing two-unit dwellings and the proposed variance will not change the use of the property.
2. The existing and resulting setbacks provide a minimum 7.38 feet of space between the structures which allows for adequate light and air.
3. The granting of the variance will help to promote orderly development inasmuch as the existing buildings can remain without substantial alteration. The lot line adjustment and resulting variance are a pragmatic, efficient solution to a recently identified California Building Code issue.
4. The subject properties are not located within a specific plan area.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2013-007 and Variance No. VA2013-007, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 21ST DAY OF MARCH, 2013.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division Conditions**

1. The lot line adjustment shall be in substantial conformance with the approved exhibit. (Except as modified by applicable conditions of approval.)
2. Variance No. VA2013-007 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. *Should either property be redeveloped in the future, the new structures shall comply with the code-required setbacks and this approval shall become null and void for that property.*
5. *The maximum encroachment for 3124/3126 Breakers Drive shall be limited to 0.80 feet and the maximum encroachment for 3130/3140 Breakers Drive shall be limited to 0.72 feet.*
6. *The buildable area for each lot shall be determined using 4-foot side setbacks.*
7. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Variance No. VA2013-007 and Lot Line Adjustment No. LA2013-007. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Public Works Conditions**

8. Property corners shall be monumented by a licensed Land Surveyor or registered Civil Engineer authorized to perform surveying by the State Board of Civil Engineers and



Land Surveyors (Pre-1982 with numbers prior to 33,966). Surveyor or Civil Engineer to submit a "Corner Record" or "Record of Survey" to the County Surveyor.

9. Prior to recordation of the lot line adjustment, grant deeds indicating the changes in titles of ownership should be submitted to the Public Works Department for review and approval.
10. The lot line adjustment and grant deeds reviewed and approved by the Public Works Department should be filed concurrently with the County Recorder and County Assessor's Offices.
11. Applicant shall comply with all the requirements identified in the Purchase and Sale of Real Property Agreement.

DRAFT

## **Attachment No. PC 2**

Applicant's Project Description and  
Justification

# ATTACHMENT TO APPLICATION FOR LOT LINE ADJUSTMENT AND VARIANCE AT 3124&3126 BREAKERS DRIVE AND 3130 BREAKERS DRIVE, CORONA DEL MAR

## PROJECT DESCRIPTION AND JUSTIFICATION

This is an application for a Lot Line Adjustment and resulting Variance for the lot line between the two properties described above. The lot line adjustment has been made necessary by the discovery by the applicants that at the time the first of the recently built dwellings were built on the properties, the Civil Engineer, Toal Engineer, incorrectly placed the property line and resultant staking for the building of the building at 3124-3126 Breakers Drive. At the time when it was discovered, the building had already been built. The net effect of this incorrect survey and placing of the stakes resulted in the residence at 3124-3126 Breakers Drive being only 2.5 feet from the Property Line at the northern most corner of the building. The lot line requested moves the lot line to the east slightly and allows that the building at 3124 Breakers Drive to maintain not less than three feet from the property line. In addition, the eaves which are part of this residence, as proposed by the new property line, will maintain not less than a two (2) foot distance from the property line.

The result of the moving of the property line is that both buildings will require a variance as each is less than four (4) feet from the adjoining property line in a zoning district where the minimum distance is required to be four (4) feet.

Attached hereto is a copy of a declaration made by Leonard Stiles, PLS, who is the Civil Engineer who discovered this mistake and brought it to the attention of the Applicants. The declaration will give the Staff and Public a better understanding of how the occurred. All applicants had, in good faith, relied on the original survey and staking of the property line.

## VARIANCE FINDING JUSTIFICATION

1. There are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;

These two properties with homes on them, through no mistake of the developing owners were built with less than the minimum side yard set back between them. Each represent a substantial investment by the respective owners. While they are similar to the other properties around them, the mistake of a surveyor has caused them to be minimally out of compliance with the zoning code.

2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;

Strict compliance with the Zoning Code would result in the demolition

of two relatively new and very expensive buildings, which are similar to the other properties in the vicinity and under identical zoning classification.

**3. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;**

Strict compliance with the Zoning Code would result in the demolition of two relatively new and very expensive buildings, which are similar to the other properties in the vicinity and under identical zoning classification. Demolition of the buildings is neither a desired option nor one that is practical as it would result in the absolute waste of millions of dollars.

**4. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;**

The Granting of the Variance is *de minimis* as no new construction results and the Variance is solely for the purpose of clearing a cloud on the title of both properties for not being in compliance with the zoning code. Both properties will be maintain the minimum legal standards for the distance between the two buildings. There will be no change to what exists today as there is no construction connected with the Granting of the Variance.

**5. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and**

The Granting of the Variance is *de minimis and* will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

**6. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.**

The granting of the variance will not be in conflict with the intent and purpose of the Zoning Code, the General Plan, or any applicable specific plan as the requested relief is *de minimis*, at most.

I, Leonard Stiles, declare:

If called to testify in any proceeding, I could and would testify to the following facts:

1. I am a Professional Licensed Surveyor, duly licensed by the California State Board of Registration for Professional Engineers. I have held this license since 1981.
2. On October 8, 2008, I traveled to Coco's Restaurant located at 27750 Crown Valley Parkway, Mission Viejo, California to meet with Ray Toal, Olav Meum, PLS, J. Jason Douglas, PLS to discuss and compare the survey undertaken by Toal Engineering for the property located at 3124 Breakers Drive, Corona del Mar, California, in comparison to the subsequent survey done by the undersigned for the same property. The purpose of the meeting was to discuss the methods of the surveys used to establish the boundary lines of said property.
3. It was reported to me from the individuals from Toal Engineering that the basis for the boundary of the Leonard property was based on Tract No. 1026 prepared in March, 1938 by J.A. Woolley, Registered Civil Engineer No. 4647 recorded in Book 33, pages 37 and 38 of Miscellaneous Maps in the Office of the Recorder of Orange County, California.
4. My research of the Public Records indicates that Mr. Woolley prepared a subsequent Record of Survey in July, 1942, which was recorded in Records of Surveys, Book 12, and page 35 in the Office of said recorder. This subsequent Record of Survey by Mr. Woolley states on its face that it was to correct the bearings and distances shown on his map of Tract No. 1026 that was prepared in 1938.
5. Based on my research and my responsibilities regarding the California Business and Professions Code, §§8700 et seq., it was the subsequent 1942 Record of Survey which I used in the preparation and recordation of Parcel Map



of Parcel Map No. 2004-131 which established Mr. Leonard's boundary. This map was recorded July 20, 2004 Parcel Map Book 338, pages 39 and 40 of Parcel Maps in the office of said recorder.

6. Based on my observations and a review of both surveys, the front southeast and southwest corners of Mr. Leonard's property are at the same positions on my survey I prepared and the survey prepared by Toal Engineering, which located the Leonard building on the property.

7. Further, and again based on my observations and review of both surveys, the rear northeast and northwest corners vary on the two surveys by 1.50' because of the corrected distances shown on the 1942 map and on the 1938 map.

8. My research reveals that the distances shown on the Orange County Assessors Office map match the distances shown on the 1942 Record of Survey and further that my survey indicates the correct positions of the boundary of Mr. Leonard's property.

9. Based on the above review and research it appears to the Declarant that the Toal Engineering location of the boundary is incorrect and my observation is that the building and wall, located by Toal Engineering and constructed by Mr. and Mrs. Leonard, were placed improperly, through no fault of Mr. and Mrs. Leonard.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed this 15<sup>th</sup> day of October, 2008, at Orange, California.



A handwritten signature in cursive script, appearing to read "Leonard Stiles".

Leonard Stiles, PLS, 5023  
License Expires December 31, 2009

A small, stylized handwritten mark or signature in the bottom right corner of the page.

# **Attachment No. PC 3**

3124/3126 Site Plan



DANIELIAN ASSOCIATES  
ARCHITECTURE & PLANNING  
SIXTY CORPORATE PARK  
IRVINE, CALIFORNIA 92608  
(949) 474-6090  
FAX: (949) 474-1422  
WWW.DANIELIAN.COM

THESE PLANS AND SPECIFICATIONS ARE PREPARED BY DANIELIAN ASSOCIATES FOR THE PROJECT DESCRIBED HEREIN. NO OTHER PERSONS OR FIRMS ARE TO BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. NO PART OF THESE PLANS OR SPECIFICATIONS IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF DANIELIAN ASSOCIATES.

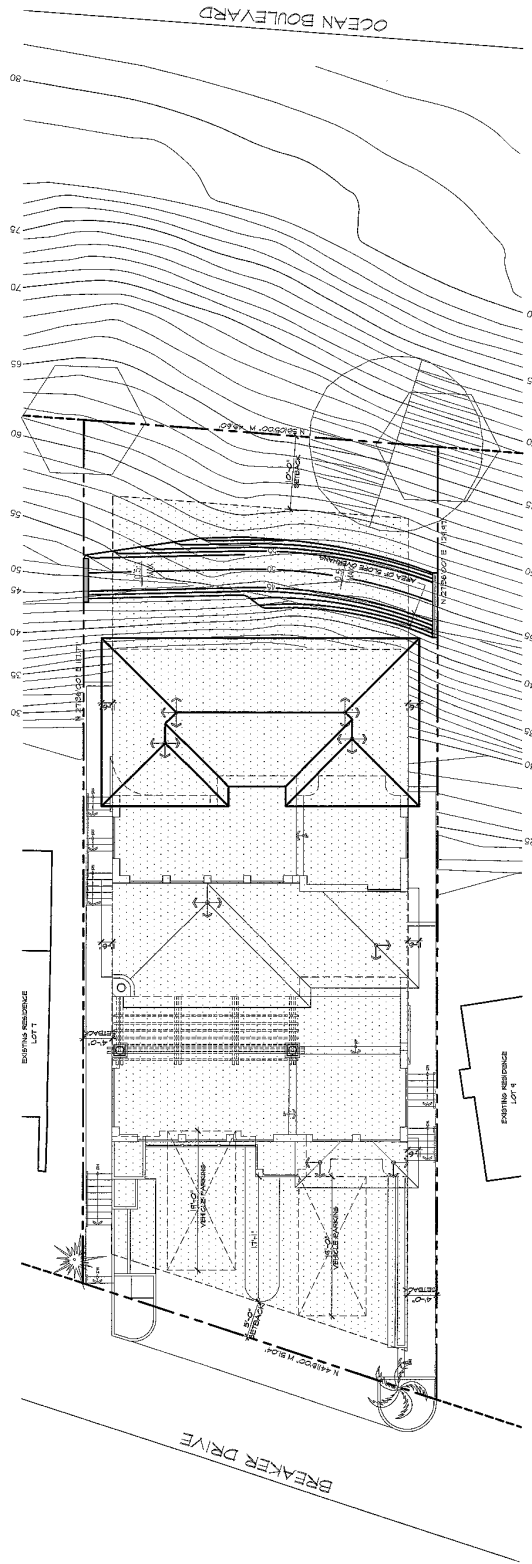


NO.	DATE	REVISION
1	NOV 05 2002	PLAN CHECK REVISIONS
2		PLAN CHECK REVISIONS
3		PLAN CHECK REVISIONS
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6		PLAN CHECK REVISIONS
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10		PLAN CHECK REVISIONS

PROJECT TITLE  
**LEONARD  
RESIDENCE**  
934 BREAKERS DRIVE  
COSTA MESA, CA 92626

PROJECT NO. 94088.04  
SHEET TITLE  
**SITE PLAN**

ORIGINAL DATE: NOV 05 2002  
PRINT DATE  
SHEET NO. AS-1



SITE PLAN  
SCALE: 1/8"=1'-0"

BUILDABLE AREA	4899 SQ. FT.
ALLOWABLE AREA	6899 SQ. FT.

REFERENCE NOTES

- 1. (SEE) FOUNDATION PROFILE
- 2. (SEE) FOUNDATION PROFILE
- 3. (SEE) FOUNDATION PROFILE
- 4. (SEE) FOUNDATION PROFILE
- 5. (SEE) FOUNDATION PROFILE
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# **Attachment No. PC 4**

3130/3140 Site Plan



# **Attachment No. PC 5**

Existing Lot Lines

Leonard C. Stiles  
PLS 5023

# **Attachment No. PC 6**

Proposed Lot Lines



Leonard C. Stiles  
PL S 5022

# **Attachment No. PC 7**

Draft Resolution for Denial

## **RESOLUTION NO. #####**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING LOT LINE ADJUSTMENT NO. LA2012-007 AND VARIANCE NO. VA2012-007 FOR AN INTERIOR LOT LINE ADJUSTMENT AND SUBSEQUENT VARIANCE FOR RESULTING SETBACK ENCROACHMENTS LOCATED AT 3124/3126 AND 3130/3140 BREAKERS DRIVE (PA2012-173)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by James C. Person, Jr. on behalf of the property owners Daniel and Bonnie Leonard and Margaret J.F. Parrott, with respect to properties located at 2124/2126 Breakers Drive and 2130/2140, and legally described as a Lot 8 of Tract No. 1026 and Parcel 1 of Parcel Map No. 2004-131, respectively, requesting approval of a lot line adjustment and variance.
2. The applicant is proposing a lot line adjustment and subsequent variance for setbacks on both properties. The condominium development at 3124 and 3126 Breakers Drive was constructed in the wrong location due to an errant survey used to site the building in 2004. The adjustment of the interior lot line (between 3124/3126 and 3130/3140 Breakers Drive) would result in side setbacks less than the required four (4) feet, but greater than three (3) feet.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential (RT-C).
5. A public hearing was held on March 21, 2013 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

**SECTION 3. REQUIRED FINDINGS.**

The Planning Commission may approve a variance only after making each of the required findings set forth in Section 20.52.090 (Variances). In this case, the Planning Commission was unable to make the required findings based upon the following:

1. The proposed variance for the side setback encroachments on both properties is not consistent with the legislative intent of Title 20 of the NBMC and that findings required by Section 20.52.090 are not supported in this case. The proposal may prove detrimental to the community.
2. The design, location, size, and characteristics of the proposed project are not compatible with the single- or two-unit dwellings in the vicinity. The development may result in negative impacts to residents in the vicinity and would not be compatible with the enjoyment of the nearby residential properties.
3. There are no special or unique circumstances or conditions applicable to the subject property. The errant survey for the property upon development does not preclude redevelopment of the existing dwellings to comply with the required development standards and approval of the Variance is not necessary to preserve this substantial property right.

**SECTION 4. DECISION.****NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies Variance No. VA2013-007.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 20TH DAY OF SEPTEMBER, 2012.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Michael Toerge, Chairman

BY: \_\_\_\_\_  
Fred Ameri, Secretary

DRAFT

**Burns, Marlene**

**From:** Zdeba, Benjamin  
**Sent:** Thursday, March 21, 2013 5:07 PM  
**To:** Burns, Marlene  
**Subject:** FW: PA2012-173, 3124/3126 & 3130/3140 Breakers Drive LA/VA

FYI – My applicant is requesting a continuance. See below.

--

**BENJAMIN ZDEBA**

PH. (949) 644-3253  
[bzdeba@newportbeachca.gov](mailto:bzdeba@newportbeachca.gov)

---

**From:** Buzz Person [<mailto:buzzlaw@buzzperson.com>]  
**Sent:** Thursday, March 21, 2013 5:02 PM  
**To:** Zdeba, Benjamin  
**Cc:** [djleonar@comcast.net](mailto:djleonar@comcast.net); [broncotreasury@broncowine.com](mailto:broncotreasury@broncowine.com); Ramirez, Gregg  
**Subject:** RE: PA2012-173, 3124/3126 & 3130/3140 Breakers Drive LA/VA

Dear Mr. Zdeba,

I have discussed this matter with my client and would like to request a continuance at this time to the next meeting on April 4, 2013, in order to attempt to develop some information as to the costs that might be associated with bringing the building at 3124/3126 Breakers Drive into compliance on the setback. At this moment, I am not sure that this amount can be ascertained with any certainty at this moment, but I'd like to, at least, make an attempt to generate that for the Commission. I believe that this can be done within the next week prior to you having to generate any new staff report. It may be that a contractor would not be able to venture a guess but it might be informative if it can be done.

Thank you for your cooperation in this regard.

Regards,

**James C. "Buzz" Person**

Attorney at Law  
507 29th Street Suite A  
Newport Beach, CA 92663

Telephone: (949) 673-9201  
Facsimile: (949) 673-0774  
email: [buzzlaw@buzzperson.com](mailto:buzzlaw@buzzperson.com)

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# Breakers Drive Lot Line Adjustment & Variance



Planning Commission  
Public Hearing  
March 21, 2013

Staff Presentation

Item No. 2b

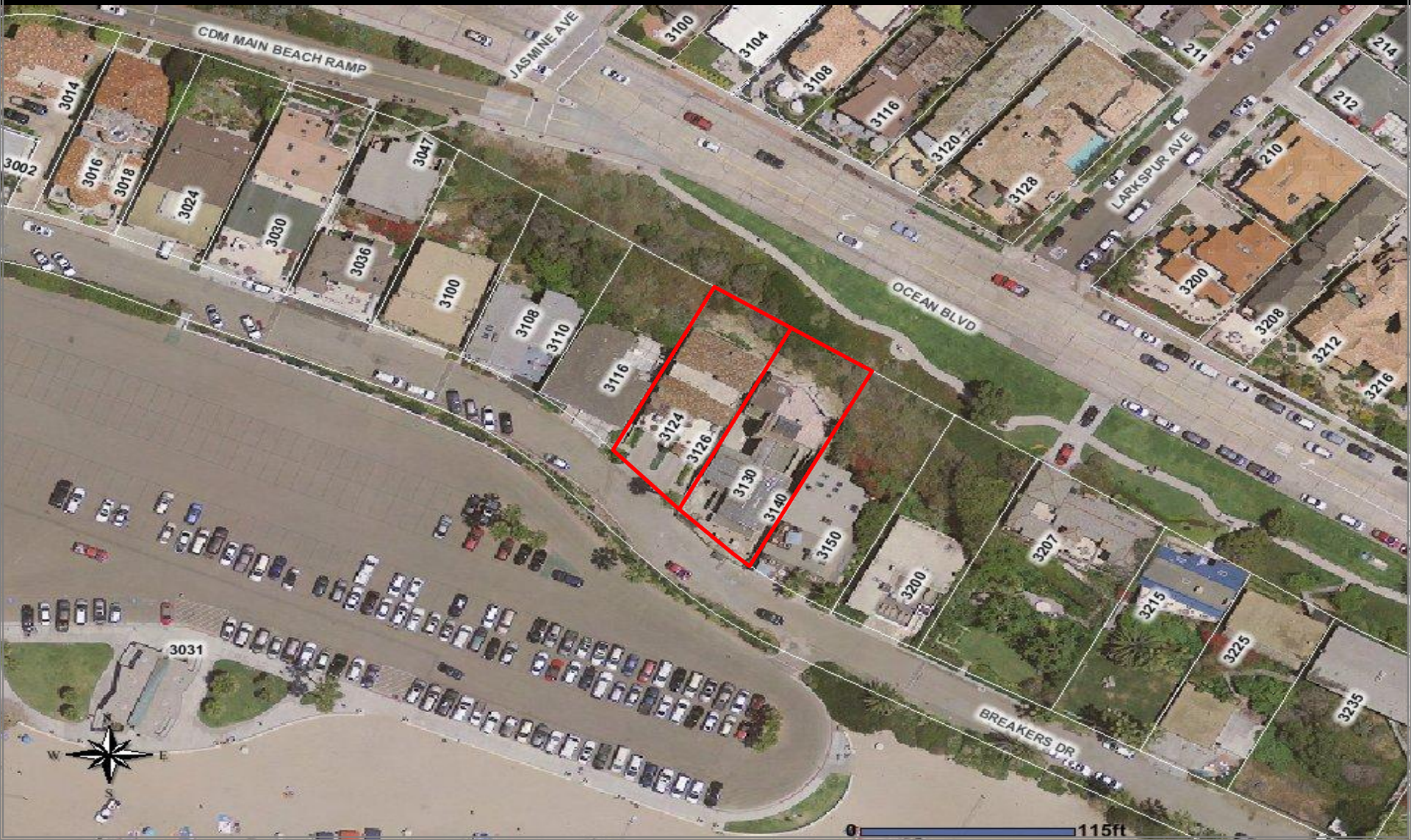
Breakers Drive Lot Line Adjustment Variance

PA2012-173



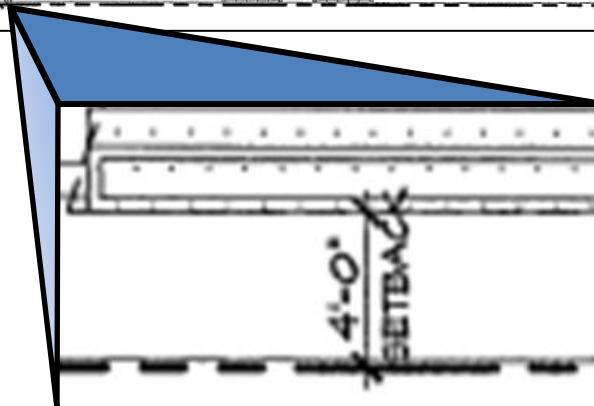
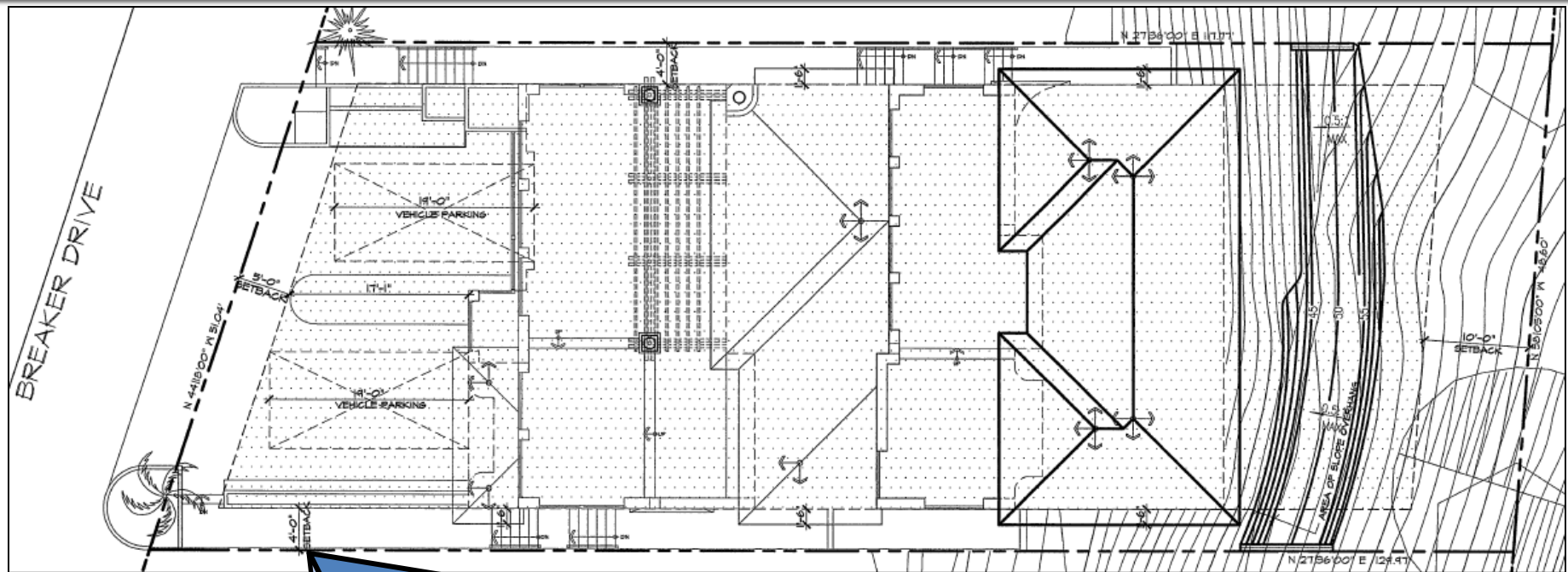


# Vicinity Map





# 3124 & 3126 Breakers Drive

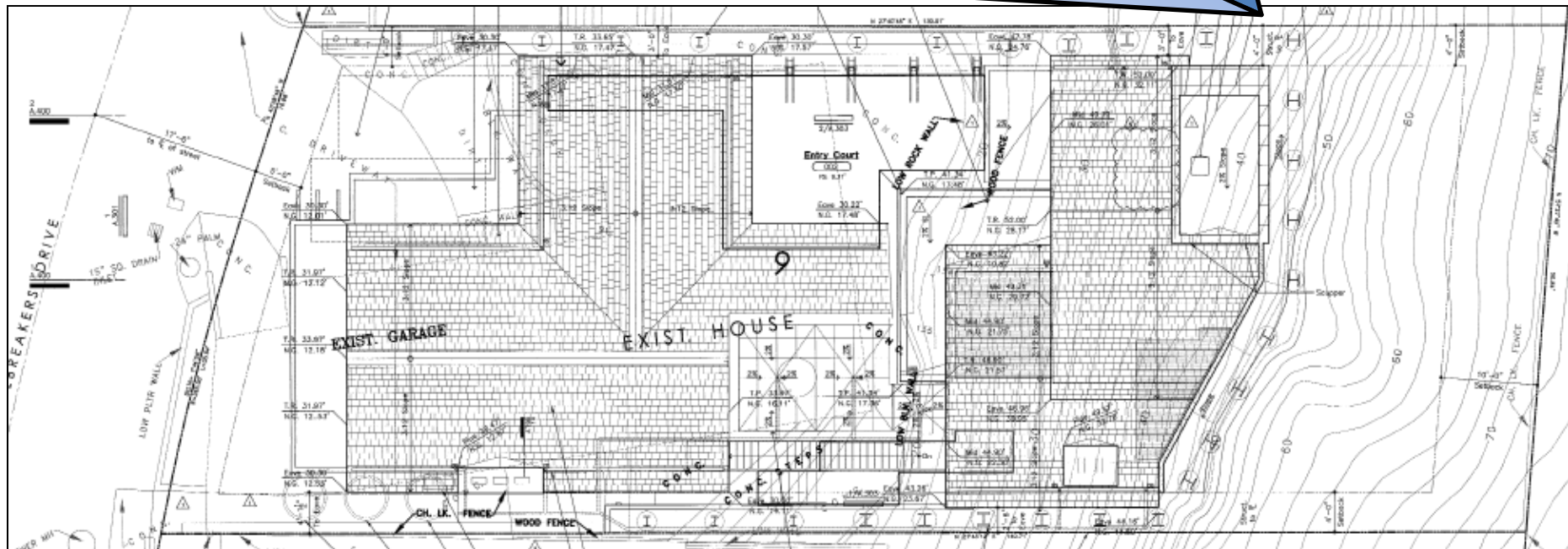
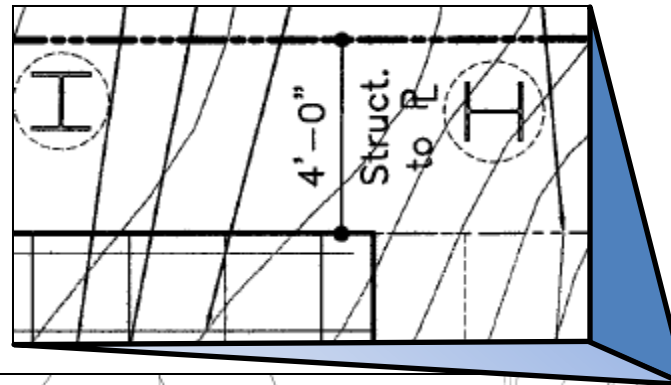


**Two-unit condominium  
6,574 square feet  
Building Permit Final  
December 8, 2004**

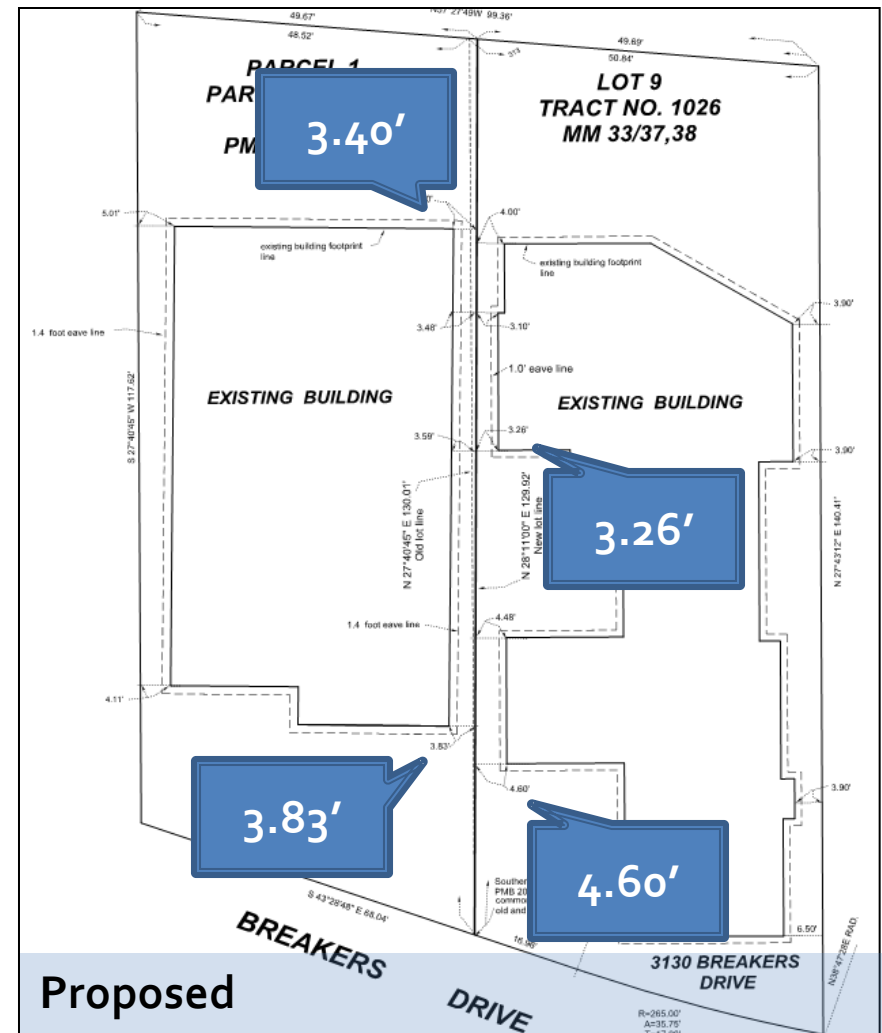
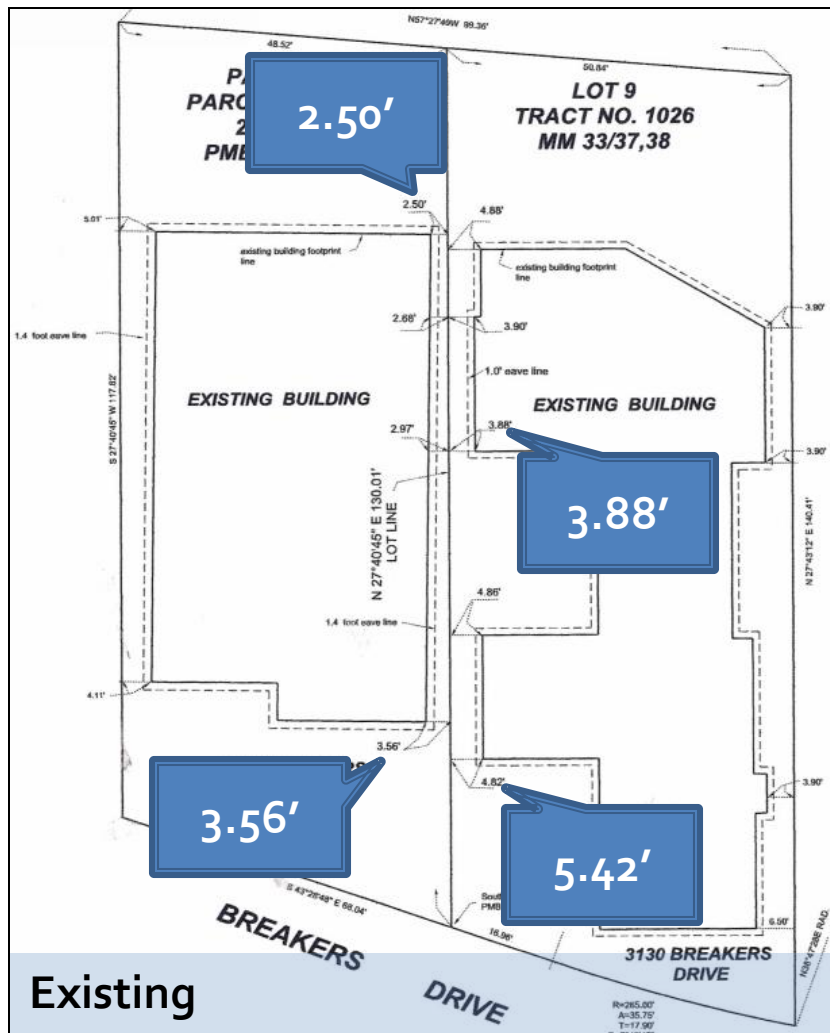
# 3130 & 3140 Breakers Drive



Duplex  
6,397 square feet  
Building Permit Final  
December 12, 2011



# Existing & Proposed Conditions





For more information contact:

Benjamin M. Zdeba, Assistant Planner  
949-644-3253  
[bzdeba@newportbeachca.gov](mailto:bzdeba@newportbeachca.gov)  
[www.newportbeachca.gov](http://www.newportbeachca.gov)